VEHICLE INFORMATION
SERVICES, INC.

June 4, 2009

BEFORE THE INSURANCE COMMITTEE OF THE MICHIGAN STATE LEGISLATURE

House Bill No. 4984

To the Honorable Ladies and Gentlemen of the Insurance Committee

Thank you for the opportunity to provide you with information regarding House Bill No. 4984.

Automobile insurance is mandated for every driver in the State of Michigan. As a result, Michigan consumers are a captive market for private property casualty insurance companies selling auto insurance. We all rely on auto insurance to pay for repairs to our vehicles when they are damaged, and consumers have the right to expect that businesses and persons engaged in professional collision repairs will provide a safe and proper repair. To be able to meet this high standard, those businesses and individuals engaged in the profession of collision repair must not be subjected to outside interests that might detract from their obligation to provide every consumer with a safe and proper motor vehicle repair.

Auto insurance carriers seek to minimize their own costs – sometimes in ways that are to the ultimate detriment on their insureds and other consumers. Although they are not professional repairers, many auto insurers seek to dictate to professional collision repairers the methods of repair, techniques to use, materials and parts for the repair of consumers' vehicles. The insurers' interest is to save themselves money. But many times, their short-sighted economic interests have the effect of placing collision repairers in the position of satisfying the insurers' desire to cut costs or providing consumers with the safe, proper repairs to which they are entitled, and for which they pay their auto insurance.

Recently, auto insurers have sought to control collision repair costs by purchasing and controlling collision repair businesses. This creates a significant conflict of interest for the insurer and the collision repairers that is harmful to consumers. The collision repairers must now choose between performing the safe, proper repair to which consumers are entitled, or engaging in practices that may be detrimental to consumers but serve their insurance employers' interests to save money.

The Texas Legislature considered this exact issue of whether insurers should be prohibited from purchasing and owning collision repair facilities when it enacted house bill 1131.

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Concerned about the conflict of interest that would likely cause insurers to pressure consumers to patronize their subsidiary collision repair shops and which would place collision repairers in the untenable position of satisfying only one of those interested parties, the Texas Legislature passed house bill 1131 prohibiting insurers from purchasing and owning collision repair facilities. The Texas Legislature was also concerned that the independent collision repairer was the only knowledgeable person capable of protecting the consumer's interest in obtaining a safe, proper repair paid for by an insurer, and allowing insurers to purchase and own collision repair facilities would remove the last vestige of protection consumers had regarding their vehicle repairs.

In an ensuing lawsuit over the statute, ***Allstate Ins. Co. v. Abbott***, *2006 U.S. Dist. LEXIS 9342 (N.D. Tex., Mar. 9, 2006), affd, 495 F.3d 151 (5th Cir. 2007), cert. denied, 128 S. Ct. 1334, 170 L. Ed. 2d 66, 2008 U.S. LEXIS 1297, 76 U.S.L.W. 3439 (U.S. 2008)*, the federal judge found in his decision that the insurer continued to direct consumers to patronize its own string of collision repair shops despite the results of the insurer's customer satisfaction surveys placing the insurer's string of shops at the very bottom of the satisfaction survey, compared to non-insurer-owned shops. In fact, the federal lawsuit confirmed what the Texas Legislature had feared would occur if insurers owned their own collision repair facilities: that the insurer would place its own economic interests above the interests of its insureds and other consumers to receive a safe, proper repair.

Furthermore, it is imperative that consumers and other businesses be given a private right of action for violations of the insurance laws and regulations. The current requirement that a consumer must provide the insurance regulatory agency with abundant proof to establish that the insurer's action contravening the law is an ongoing pattern and practice before the agency will investigate the action is insurmountable, particularly in the property casualty collision repair context where one consumer's experiences with any insurer occur infrequently. Certainly, a consumer should have equal right to seek redress from his or her insurer for wrongs or violations committed pertaining to the contract of insurance that the same consumer currently enjoys to bring against a collision repair facility for wrongs or violations committed pertaining to the repair of their motor vehicles.

Lastly, consumers must be entitled to freely seek the providers of their collision repair services. Next to a home, a motor vehicle is the second most expensive item most consumers ever own. It represents a substantial investment and they must be entitled to protect the safety and functionality and value of that investment. To be able to do so, consumers must have the freedom to choose their collision repair facility without pressure or direction from an insurer.

New York has long had a statute in effect that prevents insurers from requiring repairs be made by a particular collision repair facility and from offering unsolicited information to consumers about collision repair facilities to patronize. **NY CLS Ins § 2610.**

Although insurers contend that consumers appreciate being provided with a list of the insurer's "preferred" collision repair facilities, insurers fail to disclose to consumers exactly what criteria forms the basis for a collision shop joining its "preferred" network. Insurers vigorously defend the confidentiality of their agreements with collision repair shops and refuse to disclose the terms of those agreements – even to the insureds who have been

persuaded by the insurer to patronize a "preferred" shop. The essential criteria for most of these arrangements is that the collision shop will accede to the insurer's cost-cutting requirements that can be harmful to consumers in the safety, functionality, and value of their motor vehicles. Collision shops are, likewise, required to completely indemnify the referring insurer, often in ways and with terms that actually place the repair facilities' garagekeeper's insurance at risk.

Insurers' "preferred" network of collision repair shops arrangements are designed to promote the insurers' interest to effectively control the cost and manner in which consumers' vehicles are repaired, and to conceal this purpose from consumers. Without meaningful disclosure to consumers about the nature and terms of these "preferred" collision repair shop arrangements with insurers, consumers cannot make truly informed decisions that affect their safety, vehicle values, and their own interests.

I urge you to pass House Bill No. 4984 to protect each and every citizen of the State of Michigan and to allow Michigan consumers to engage in freedom of choice.

Thank you.

E. L. Eversman

E. L. Eversman, J.D.
Chief Counsel
Vehicle Informtion Services, Inc.

United States v. Association of Casualty and Surety Companies, American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies.

Civil Action No. 63 Civ. 3106.

United States District Court for the Southern District of New York.

1963 U.S. Dist. LEXIS 9949; 1963 Trade Cas. (CCH) P70,917

November 27, 1963.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff United States instituted an antitrust action against defendant automobile insurers to restrain the insurers from carrying out an independent appraisal plan. The United States and the insurers consented to a final judgment of the court.

OVERVIEW: The United States instituted an antitrust action against the insurers. The parties consented to the entry of a final judgment. The court held that it had jurisdiction under §§ 1, 3 of the Act of Congress of the 2nd of July, 1795, known as the Sherman Act. The judgment was final as to the insurers and others who acted in concert with them. The insurers were ordered to send a written notice within 90 days indicating that they had abandoned an independent appraisal plan. The insurers were enjoined from recommending any appraiser of damage to automobiles. They were also restrained from advising that a person refuse to do business with such entities or with repair shops. The insurers were not to exercise control over the appraisers and were not to divide customers among the appraisers. The fixing of prices for appraisals and car repairs was restrained. Each local claims managers' council charter was to be amended to incorporate the requirements of the judgment. The insurers retained their rights under the McCarran-Ferguson Act. The Department of Justice was to have access to the insurers' records. The court retained jurisdiction to make further orders to carry out the judgment.

OUTCOME: The court entered the consent judgment in accordance with the opinion.

OPINION BY: [*1] MCLEAN

OPINION

Final Judgment

MCLEAN, District Judge: Plaintiff, United States of America, having filed its complaint herein on October 23, 1963, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without admission by any party with respect to any issue herein;

Now, therefore, before the taking of any testimony herein, without trial or adjudication of any issue, and upon such consent, as aforesaid, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto and the complaint states a claim upon which relief can be granted under Sections 1 and 3 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended.

II

The provisions of this Final Judgment shall be binding upon each defendant and upon its officers, directors, agents, servants, employees, committees, successors and assigns, and upon all other persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

(A) Each defendant is ordered and directed [*2] within ninety (90) days from the entry of this Final Judgment to terminate, cancel and abandon the Independent Appraisal Plan, sometimes known as the Automotive Damage Appraisal Plan, which the defendants have established and are now administering, and each defendant is enjoined from reviving, renewing or again placing into effect that plan.

(B) Defendants are ordered and directed within ninety (90) days from the entry or this Final Judgment to send a written notice, in the form attached hereto as an exhibit, stating that all defendants have terminated, cancelled and abandoned the Independent Appraisal Plan (1) to each appraiser sponsored under the Plan, (2) to each member company, and (3) to each Local Casualty Insurance Claims Managers' Council.

IV

(A) Each defendant is enjoined from placing into effect any plan, program or practice which has the purpose or effect of

(1) sponsoring, endorsing or otherwise recommending any appraiser of damage to automotive vehicles;

(2) directing, advising or otherwise suggesting that any person or firm do business or refuse to do business with (a) any appraiser of damage to automotive vehicles with respect to the appraisal of such damage, [*3] or (b) any independent or dealer franchised automotive repair shop with respect to the repair of damage to automotive vehicles;

(3) exercising any control over the activities of any appraiser of damage to automotive vehicles;

(4) allocating or dividing customers, territories, markets or business among any appraisers of damage to automotive vehicles; or

(5) fixing, establishing, maintaining or otherwise controlling the prices to be paid for the appraisal of damage to automotive vehicles, or to be charged by independent or dealer franchised automotive repair shops for the repair of damage to automotive vehicles or for replacement parts or labor in connection therewith, whether by coercion, boycott or intimidation or by the use of flat rate or parts manuals or otherwise.

(B) Nothing in Subsection (A) above shall be deemed to prohibit the furnishing to any person or firm of any information indicating corrupt, fraudulent or unlawful practices on the part of any appraiser of damage to automotive vehicles or any independent or dealer franchised automotive repair shop, so long as the furnishing of such information is not part of a plan, program or practice enjoined in paragraphs (1) [*4] through (5) of Subsection (A) above. Each defendant shall include in any report of such information an affirmative statement that such report is not a recommendation and that the person or firm to whom such report is furnished should independently determine whether to do business with any appraiser or automotive repair shop to which the report relates.

V

Defendants are ordered and directed within ninety (90) days from the entry of this Final Judgment to cause the charter of each Local Casualty Insurance Claims Managers' Council to be amended so as to incorporate therein a declaration of policy that the Council shall not engage in any activity prohibited by Section IV of this Final Judgment.

VI

Nothing in Section IV of this Final Judgment shall be deemed to determine or constitute a waiver of any rights or immunities that defendants may have under the Act of Congress of March 9, 1945, commonly known as the McCarran-Ferguson Act.

VII

(A) For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney [*5] General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted.

(1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment during which time counsel for such defendant may be present; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

(B) Any defendant, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit within a reasonable time such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may be reasonably necessary for the purpose of the enforcement of this Final Judgment.

(C) No information obtained by the means provided in this Section VII shall be divulged by any representative [*6] of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Exhibit

Special Bulletin

The United States Department of Justice on , 1963, filed a complaint in the United States District Court for the Southern District of New York alleging that the Association of Casualty and Surety Companies, the American Mutual Insurance Alliance and the National Association of Mutual Casualty Companies had violated the antitrust laws.

On , 1963, a Consent Judgment was entered, having been previously agreed upon by the Department [*7] of Justice and by the attorneys for the three named defendants.

The Judgment commands, among other things, that the three defendants, their officers, directors, agents, servants, employees, committees, successors and assigns must, within ninety days of the entry of the Judgment, terminate, cancel and abandon the Independent Appraisal Plan, which has also been known as the Automotive Damage Appraisal Plan. Accordingly, this is to notify you that that plan is hereby terminated, that neither the three defendants nor anyone acting on their behalf, including the Local Casualty Insurance Claims Managers' Councils, will hereafter sponsor in any way any appraiser of damage to automotive vehicles, and that any existing sponsorship of any such appraiser is hereby withdrawn.